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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SIDNEY COLE,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B213345

(L.A.S.C. No. NA079052)

OPINION AND ORDER
GRANTING PEREMPTORY
WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Joan Comparet-Cassani, Judge. Petition granted.

Michael P. Judge, Public Defender, Albert J. Menaster, Walter Munoz and Karen Elizabeth Nash, Deputy Public Defenders for Petitioner.

No appearance for Respondent.

Steve Cooley, District Attorney, Phyllis C. Asayama and Jennifer C. McDonald, Deputy District Attorneys for Real Party in Interest.

The trial court abused its discretion in denying Sidney Cole's ex parte motion for the appointment of an expert. Accordingly, the petition is granted.¹

FACTUAL AND PROCEDURAL BACKGROUND

Sidney Cole is a defendant in a criminal animal cruelty case.

According to the prosecution, at approximately 12:00 p.m. on July 18, 2008, Officer Hynes was in his vehicle when he drove up to Cole and ordered him to take control of his dog. Cole, who appeared drunk at the time, replied "Fuck you." Officer Hynes continued to order Cole to control his dog. Cole eventually picked up the dog by the collar, which caused the dog to gasp for air. Cole carried the dog away by the collar. Officer Hynes followed and, again, ordered Cole many times to put down the dog. Approximately 100 yards out, the dog lost consciousness causing the eyes to roll back and tongue to fall to the side of the mouth. Cole dropped the dog, rubbed its sides, and it regained consciousness. Cole picked up the dog again and the dog began choking again. Cole carried the dog by the collar causing it to choke and lose consciousness no less than four times over the course of four blocks. Cole released the dog and it ran away. Officer Hynes exited the vehicle to confront Cole. The dog came back and ran towards Officer Hynes. From his vehicle, Officer Hynes used a taser three times on the dog. After the second time the dog fell to the ground, regained its feet and attacked the vehicle door. After the third time the dog ran off carrying the taser darts and wire with it. Officer

¹ As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate "in the first instance." (Code Civ. Proc., § 1088; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240-1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court's intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

Hynes exited the vehicle again and had to use force to subdue Cole. Approximately one hour later, the dog was found and captured. The dog was seen by staff from Long Beach Animal Control and the dog was evaluated by Crossroads Animal Hospital and Long Beach Animal Hospitals. Veterinary records were generated from these evaluations.

On November 20, 2008, Cole filed an ex parte motion to appoint an expert, a veterinarian, and requested it be filed under seal. Attached to the ex parte motion was a declaration of defense counsel explaining the need for an expert. The trial court agreed to seal the motion and the declaration. The trial court denied the motion on the grounds Cole showed neither need nor good cause to appoint an expert.

DISCUSSION

“Although Evidence Code section 730 provides for court-appointed experts, the statute does not grant a defendant in a criminal case an absolute right to the appointment of an expert on his behalf but is a matter discretionary with the court.” (*People v. Vattelli* (1971) 15 Cal.App.3d 54, 61.) An expert will only be appointed upon a showing of need. (*Torres v. Municipal Court* (1975) 50 Cal.App.3d 778, 785.) In determining whether to appoint an expert, the trial court must be made aware of the facts supporting the need for expert testimony. (*McGuire v. Superior Court* (1969) 274 Cal.App.2d 583, 598.)

In this case, it appears that Cole provided the trial court, with his counsel’s declaration, sufficient information to demonstrate a specific need and good cause for the appointment of a veterinarian, who would assist in the evaluation of veterinary records, reports and photographs of the dog.

Given the delayed request for an expert, we would not expect the appointment to affect the trial date.

DISPOSITION

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of November 20, 2008, denying defendant Sidney Cole's ex parte motion for the appointment of an expert, and to issue a new and different order granting same, in Los Angeles Superior Court case No. NA079052, entitled People v. Sidney Cole.

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THE COURT:

MALLANO, P. J.

ROTHSCHILD, J.